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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,539	01/27/2005	Neil Bonnette Graham	KC-0128	8512
34610	7590	10/18/2007	EXAMINER	
KED & ASSOCIATES, LLP			PALO, FRANCIS T	
P.O. Box 221200			ART UNIT	
Chantilly, VA 20153-1200			PAPER NUMBER	
			3644	
			MAIL DATE	DELIVERY MODE
			10/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/522,539

Applicant(s)

GRAHAM ET AL.

Examiner

Francis T. Palo

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 26 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 2 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-18, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment / Arguments

Applicant's arguments filed 7/26/07 have been fully considered but they are not persuasive.

Applicants submit that Veronesi **appears** to use a hydrogel within a pot, which holds a plant; as such, the examiner submits that the pot of Veronesi is therefore readable on an enclosure as originally and broadly claimed.

Applicants further submit Veronesi fails to teach or suggest placing the particulate hydrogel within a conformable sealed porous bag (*Remarks/Arguments*; page-8, second-to-last paragraph) as amended; originally, 'contained within a porous bag **or enclosure**'.

While Veronesi lacks illustration to facilitate understanding of the invention as a machine translation, the examiner is not convinced that the translation, 'interposition of a permeable separating element.....like a sieve or mesh of suitable sizes', is referring to a pot (machine translation; page-3, third paragraph).

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And while Veronesi lacks a professional translation, it is clear that the reference teaches a plant cultivation system comprising poly(ethylene oxide) hydrogel as recited in the instant independent claim, which is placed close to the roots of plants growing in pots or containers as recited in instant claim-3.

In the previous office action mailed 1/26/07, the examiner made of record the not relied upon prior art of Anderson '834; Applicants amendment necessitates the new ground(s) of rejection presented in this Office action, as the independent claim has been amended to overcome the rejection of the broad alternative enclosure originally presented as discussed above. Accordingly, this action is made final.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-18, 20 and 21 are rejected under 35 U.S.C. 103(a),
as being unpatentable over **Veronesi** (FR 2406387) 1979,
in view of **Anderson** (US 5,317,834) 1994.

Regarding amended **claim-1**:

It has been submitted that Veronesi '387 teaches a plant cultivation system comprising poly(ethylene oxide) hydrogel as recited in the instant independent claim, which is placed close to the roots of plants growing in pots or containers as recited in instant claim-3.

It is not readily apparent from the machine translation if a bag is taught by Veronesi as claimed.

Anderson '834 teaches a conformable sealed porous bag (figure-10) containing a hydrogel, as claimed; it is respectfully submitted that it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have utilized the bag as taught by Anderson in the instant invention for the advantages as taught by Anderson, specifically, "promoting the growth and survivability of seeds and seedlings" (col.-5, line-45); further, where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the **mere application of a known technique to a piece of prior art ready for improvement**," the claim is unpatentable under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing KSR v. Teleflex, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)).

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Accordingly, Applicants claim a combination that only unites old elements with no change in the respective functions of those old elements, and **the combination of those elements yields predictable results**; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing *KSR*, 127 S.Ct. at 1740, 82 USPQ2d at 1396).

Accordingly, since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

Regarding **claims 4-9 and 13**:

The claims are directed to the poly(ethylene oxide) hydrogel and were not argued in the *Response* filed 7/26/07; the corresponding claim rejections submitted in the action mailed 1/26/07 are therefore maintained and incorporated herein by reference only.

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Regarding claims **10-12, 14-18, 20 and 21**:

The claims are directed to the bag which were rejected previously as anticipated by Veronesi and which were not argued in the *Response* filed 7/26/07; the examiner takes Official Notice therefore that the bag as taught by Anderson is capable of those limitations recited in the listed claims for at least the same rationale submitted in the action mailed 1/26/07.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Francis T. Palo

Francis T. Palo
Primary Examiner
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